United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

BRIEF FOR APPELLEE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20,102

303

RALEIGH R. POWELL, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

Appeal from the United States District Court for the District of Columbia

DAVID G. BRESS,
United States Attorney.

FRANK Q. NEBEKER,
DONALD S. SMITH,
THEODORE WIESEMAN,
Assistant United States Attorneys.

Cr. No. 296-65

QUESTION PRESENTED

After having conducted one pre-trial hearing on appellant's competency to stand trial, was the District Court required to act *sua sponte* and order a second hearing at the time of trial solely because appellant had a history of narcotics addiction and was on bond before trial?

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FOR THE DISTRICT OF COLUMBIA CIRCUIT

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UNITED STATES OF AMERICA, APPELLEE

Appeal from the United States District Court for the District of Columbia

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BRIEF FOR APPELLEE

COUNTERSTATEMENT OF THE CASE

A jury convicted appellant under a single-count indictment charging him with grand larceny (22 D.C. Code § 2201). The Honorable Burnita Shelton Matthews sentenced him to serve a term of one to five years' imprisonment.

On March 22, 1965, the grand jury returned the indictment in the instant case (Cr. 296-65) together with a second indictment (Cr. 295-65) charging appellant with

carrying a pistol in violation of 22 D.C. § 3204.[1] After arraignment he was committed to jail until March 31 when he was admitted to bail.

On May 12, retained counsel representing appellant in both cases filed in the weapons case a written motion for a mental examination alleging that appellant had been addicted to heroin for 20 years, had suffered severe withdrawal symptoms while in jail before being released on bond, had not acted rationally in court on May 11, and had given inconsistent answers to questions during interviews with counsel (see record in No. 20,008). After examining appellant on two days at the courthouse, a Legal Psychiatric Services doctor reported by letter dated July 9 that although appellant suffered from a personality disorder, passive-aggressive personality, he was competent for trial. Appellant objected to the report, and on July 26 the court conducted a hearing after which the court revoked bond and committed appellant to St. Elizabeths Hospital for a 60-day mental examination to cover both the instant case and the weapons case (see docket entry for July 26, 1965).

Two months later, the hospital reported:

> . . . . It is our opinion that he is not now, and was not, on or about November 13, 1965 and February 11, 1965 suffering from mental disease or defect, but he was suffering from drug addiction which is in remission. He is not receiving any medication.

On October 5 the District Court conducted a second hearing on appellant's competency to stand trial and entered an order finding him competent.[2]

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[1] Appellant was convicted of the weapons offense, and an appeal from that conviction has been docketed as No. 20,008. All the papers concerning appellant's competency to stand trial in the instant case are found in the record filed with No. 20,008.

[2] Appellant contends (App. Br. 3) that no hearing was held, but we read the docket entry of October 5, 1965, to the contrary. A transcript of the proceedings was never prepared. For the convenience of the Court, we are ordering a transcript from the reporter, who has since left the courthouse, and we hope that it will be available before oral argument.

After this hearing appellant remained in jail about ten weeks, until being admitted to bond on December 30. At the trial on February 7, 1966, appellant did not testify, and neither the government nor the defense introduced any evidence about his history of narcotics addiction.

SUMMARY OF ARGUMENT

Since appellant had a pre-trial hearing on his competency to stand trial, and since nothing occurred at trial creating "a substantial doubt" about his competency, the trial court was not obliged *sua sponte* to afford appellant a second hearing at trial.

ARGUMENT

Since appellant had a pre-trial hearing on his competency to stand trial, the District Court was not obliged to hold *sua sponte* a second hearing at trial because appellant had a history of narcotics addiction.

Nothing in *Pate* v. *Robinson*, 383 U.S. 375 (1966), or in *Hansford* v. *United States*, No. 19,436, D.C. Cir., July 6, 1966, required the trial court in the instant case to order *sua sponte* a hearing during trial on appellant's mental competency. Those cases hold that when developments at trial cast "a substantial doubt" [3] on an accused's competency to stand trial, the trial judge must stop the proceedings on his own motion and take measures to satisfy himself that the accused is competent. The "substantial doubt" arose in *Pate* v. *Robinson* because there was no judicial determination of competency before trial and because testimony at trial showed a long history of bizarre conduct and mental illness. It arose in *Hansford* v. *United States*, where there was a judicial determination but no hearing on competency, because of expert testimony at trial that the accused's narcotics habit had

[3] The "substantial doubt" language appears in *Hansford* v. *United States*, *supra*, slip opinion at 5.

impaired his thought processes by creating a mental disorder called acute brain syndrome and because the accused said in open court that he had been taking narcotics during the trial. It was not the fact of narcotics addiction that required the hearing in *Hansford*, but the possibility of an acute brain syndrome. "Narcotics use does not invariably produce an acute brain syndrome. . . ." *Hansford* v. *United States*, *supra* at 6. In short, a hearing is required at trial only if information comes to the court's attention casting "a substantial doubt" on the accused's ability to participate in the trial.

The instant case is entirely different. The trial court did know appellant was an addict (Tr. 61), but otherwise there was no mention of addiction, acute brain syndrome, or any other fact that would suggest incompetency. To the contrary, since acute brain syndrome is a mental disorder, the hospital's report dated September 21, 1965, finding appellant without "mental disease or defect" indicates that he did not have the syndrome. Moreover, appellant had a hearing before trial that presumably settled the issue.[4] In effect, since there is absolutely no evidence of incompetency in the record, appellant's contention amounts to a requirement that trial judges must act *sua sponte* to give every narcotics addict who has been admitted to bail a competency hearing at trial no matter how many hearings on the same subject the court conducted before trial.[5] We know of nothing in the law, or in any other discipline involving human reason, dictating that kind of a result.

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[4] See note 2, *supra*.

[5] In his "Motion for Reversal and Remand", but not in his brief, appellant alleges off the record that he did take a dose of narcotics before trial. We do not think that a narcotics addict can obtain a new trial under *Hansford* by waiting until after his conviction and simply alleging that he took narcotics during trial. Moreover, we understand *Robinson* and *Hansford* to require that the "substantial doubt" of competency arise from facts in the record known to the trial court.

CONCLUSION

THEREFORE, it is respectfully submitted that the judgment of the District Court should be affirmed.

DAVID G. BRESS,
United States Attorney.

FRANK Q. NEBEKER,
DONALD S. SMITH,
THEODORE WIESEMAN,
Assistant United States Attorneys.

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BRIEF FOR APPELLANT

UNITED STATES COURT OF APPEALS

For the District of Columbia Circuit

No. 20102

Raleigh R. Powell, Appellant

v.

United States of America, Appellee

Appeal from Judgment of the United States
District Court for the District of Columbia

Edwin R. Schneider, Jr.
1744 R Street, N.W.
Washington, D. C. 20009

September 2, 1966

STATEMENT OF QUESTIONS PRESENTED

Whether the appellant was denied a fair trial by the failure of the trial court to order a hearing concerning his competency to stand trial, when the diagnosis of the hospital doctors who examined him prior to trial established that the defendant was addicted to drugs.

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UNITED STATES COURT OF APPEALS
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No. 20102

Raleigh R. Powell, Appellant

v.

United States of America, Appellee

Appeal From Judgment of the United States
District Court for the District of Columbia

BRIEF FOR APPELLANT

Jurisdictional Statement

This is an appeal from a judgment of the United States District Court for the District of Columbia entered on March 11, 1966, convicting the appellant of grand larceny, 22 District of Columbia Code 2201. The notice of appeal was filed pursuant to Rule 37 of the Federal Rules of Criminal Procedure, Title 18 U.S.C., and Section 1915 of Title 28, of the District of Columbia Code on March 30, 1966.

Statement of the Case

On February 7, 1966, Raleigh R. Powell was convicted of grand larceny. On July 26, 1965, prior to his trial, he was committed to St. Elizabeths Hospital for an examination of his mental competency pursuant to Section 301 of Title 24 of the District of Columbia Code. This commitment was made subsequent to a Motion for Mental Examination filed by Powell's trial counsel on May 12, 1965. This motion stated that Powell "has been addicted to the use of drugs (heroin) for a period of more than twenty years."[1/] It also stated that when trial counsel visited Powell in the D.C. Jail, appellant was " ... suffering with withdrawal effects so seriously that he had to be restrained from doing harm to himself."

On September 21, 1965, the Acting Superintendent of St. Elizabeths Hospital, David W. Harris, M. D., wrote the following report to the Clerk of the Criminal Division of the District Court:

1/ This motion and the report of the Acting Superintendent of St. Elizabeths Hospital will be found in the record of Powell v. United States (Case No. 20008, Cr. No. 295-65), another appeal involving the same appellant. The motion for mental examination and the order directing the commitment concerned both Cases 295-65 and 296-65, as they were both pending before the District Court at the same time.

"Mr. Raleigh Powell was committed to St. Elizabeths Hospital on July 26, 1965 for a period not to exceed sixty days, for mental observation.

"Mr. Powell's case has been studied since his admission to the hospital and he has been examined by qualified psychiatrists. On September 20, 1965, Mr. Powell was examined and his case reviewed in detail at a medical staff conference. As a result of our examination and observation, it is our opinion that Raleigh Powell is mentally competent for trial. It is our opinion that he is not now, and was not, on or about November 13, 1965 and February 11, 1965 suffering from mental disease or defect, but he was suffering from drug addiction which is in remission. He is not receiving any medication." (Emphasis supplied)

On October 5, 1965, without objection from appellant's trial counsel and without holding a hearing, the District Court found that appellant was mentally competent to stand trial, to understand the proceedings against him, and to assist in his own defense. Trial was held on February 7, 1966. Appellant was found guilty on that date, and on March 1, 1966, appellant was sentenced to imprisonment for a period of from one to five years. Reviewing appellant's record, the trial court recommended that a study be made to determine whether treatment for narcotics addiction would be beneficial to the defendant.

Statement of Points

The appellant was denied a fair trial by the failure of

the trial court to order a hearing concerning his competency to stand trial, when the report from St. Elizabeths Hospital showed that he was suffering from drug addiction.

Summary of Argument

This Court's recent decision in Hansford v. United States, U.S. App. D.C. (Case No. 19,436, decided July 6, 1966) holds that a trial court must order a hearing concerning competency to stand trial when the medical report from St. Elizabeths Hospital shows that a defendant is addicted to drugs. The diagnosis in this case clearly comes within the doctrine enunciated in the Hansford case.

Argument

Viewed in the light of this Court's recent decision in the Hansford case, this appeal presents a simple question which must be resolved in the appellant's favor.

Hansford concerned a conviction for violation of the federal narcotics laws. Prior to trial, Hansford was committed to St. Elizabeths Hospital for a 60-day mental examination. He was diagnosed as "without mental disorder and drug addiction in remission." Without referring to his narcotic problem, the Hospital reported that he was competent to stand trial, and the

District Court adopted this determination without hearing. At trial, the appellant raised the defense of insanity. Extensive evidence was admitted during trial of the case concerning the relationship between his mental condition and his narcotic addiction.

On the basis of these facts, this Court held that there was " ... a sufficient likelihood of incompetence to have imposed on the trial court a duty to inquire into appellant's competency." It concluded that, " ... only by a hearing can it be determined whether any particular defendant is incompetent because of his use of drugs." (Slip opinion, p. 6) The court made it clear that the full hearing on competency would be required in every case involving a diagnosis of narcotics addiction as a result of an examination at St. Elizabeths Hospital. The necessity for hearing was not dependent upon the evidence elicited at trial. This is manifest from this Court's holding that a competency hearing is required upon a diagnosis of drug addiction, and that it is "also" necessary when it appears that a defendant may be suffering from withdrawal symptoms during trial.

As noted in the statement of this case, supra, the appellant received from St. Elizabeths Hospital almost the identical diagnosis which Hansford received. The only possible

distinction between the instant case and Hansford lies in the fact that there was also evidence of mental incompetence introduced at Hansford's trial. The distinction is meaningless, however, in light of this Court's statement at page 6 of the slip opinion in Hansford:

> "We believe the record in this case demonstrates, as did that in Pate v. Robinson, a sufficient likelihood of incompetence to have imposed on the trial court a duty to inquire into appellant's competency. This is not, of course, to say that a defendant under the influence of narcotics is necessarily incompetent. Narcotic use does not invariably produce an acute brain syndrome, nor is every syndrome of the same degree of severity. The effect of narcotic use will vary depending on the amount of drugs taken, the degree of tolerance developed by the individual, and the idiosyncratic reaction of the person to the drugs. For this very reason, only by a hearing can it be determined whether any particular defendant is incompetent because of his use of drugs. [footnote omitted]" (Emphasis supplied)

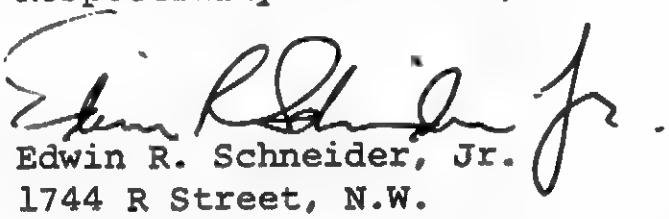
The Court then went on to state, very significantly, "We also believe that a competency hearing is constitutionally required if it appears that a defendant may be suffering from withdrawal symptoms during trial." (Emphasis supplied) The use of the word "also" makes it crystal clear that the Court was distinguishing between matters brought to the Court's attention prior to trial and evidence elicited during trial. The Court clearly stated that in both of these instances, the competency hearing would be required.

It would, of course, be quite ridiculous to require that a competency hearing be held only when evidence is adduced at trial concerning drug addiction and withdrawal symptoms. If a defendant is not competent during trial to assist counsel in its own defense, that defendant will not be competent to bring out at trial those aspects of incompetence caused by the very addiction which caused his incompetence.

Conclusion

This case should be reversed and remanded to the District Court with instructions to hold a hearing to determine whether the appellant is competent to stand a new trial.

Respectfully submitted,



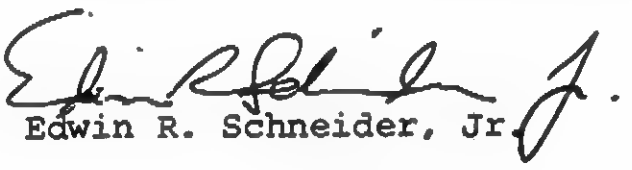
Edwin R. Schneider, Jr.
1744 R Street, N.W.
Washington, D.C. 20009

Attorney for Appellant
(Appointed by this Court)

September 2, 1966

Certificate of Service

I, Edwin R. Schneider, Jr., certify that I mailed a copy of the foregoing brief on September 2, 1966, to Frank Q. Nebecker, Assistant United States Attorney, U.S. Court House, Washington, D.C.



Edwin R. Schneider, Jr.

UNITED STATES COURT OF APPEALS
For the District of Columbia Circuit

No. 20102
(Cr. No. 296-65)

Raleigh R. Powell, Appellant

v.

United States of America, Appellee

PETITION FOR REHEARING EN BANC

Raleigh R. Powell, appellant, by his attorney, respectfully requests that this Court order rehearing of this case by the Court en banc, pursuant to the provisions of Rule 26 of the United States Court of Appeals for the District of Columbia Circuit. In a per curiam decision of a panel of this Court, dated December 28, 1966, the judgment of the United States District Court for the District of Columbia, convicting the appellant of grand larceny, was affirmed.

FACTS OF THE CASE

On February 7, 1966, Raleigh R. Powell was convicted of grand larceny. On July 26, 1965, prior to his trial, he was committed to St. Elizabeths Hospital for an examination of his mental competency pursuant to Section 301 of Title 24 of the District of Columbia Code. This commitment was made subsequent to a Motion for Mental Examination filed by Powell's trial counsel on May 12, 1965. This motion stated that Powell "has been addicted to the use of drugs (heroin) for a period of more than twenty years."[1/] It also stated that when trial counsel visited Powell in the D.C. Jail, appellant was " ... suffering with withdrawal effects so seriously that he had to be restrained from doing harm to himself."

On September 21, 1965, the Acting Superintendent of St. Elizabeths Hospital, David W. Harris, M. D., wrote the following report to the Clerk of the Criminal Division of the District Court:

1/ This motion and the report of the Acting Superintendent of St. Elizabeths Hospital will be found in the record of Powell v. United States (Case No. 20008, Cr. No. 295-65), another appeal involving the same appellant. The motion for mental examination and the order directing the commitment concerned both Cases 295-65 and 296-65, as they were both pending before the the District Court at the same time.

"Mr. Raleigh Powell was committed to St. Elizabeths Hospital on July 26, 1965, for a period not to exceed sixty days, for mental observation.

"Mr. Powell's case has been studied since his admission to the hospital and he has been examined by qualified psychiatrists. On September 20, 1965, Mr. Powell was examined and his case reviewed in detail at a medical staff conference. As a result of our examination and observation, it is our opinion that he is not now, and was not, on or about November 13, 1965, and February 11, 1965, suffering from mental disease or defect, but he was suffering from drug addiction which is in remission. He is not receiving any medication."
(Emphasis supplied)

On October 5, 1965, without objection from appellant's trial counsel and without holding a hearing, the District Court found the appellant was mentally competent to stand trial, to understand the proceedings against him, and to assist in his own defense. Trial was held on February 7, 1966. Appellant was found guilty on that date, and on March 1, 1966, appellant was sentenced to imprisonment for a period of from one to five years. Reviewing appellant's record, the trial court recommended that a study be made to determine whether treatment for narcotics addiction would be beneficial to the defendant.

ARGUMENT

In his brief and in argument before this Court, the appellant has taken the position that this Court's recent decision in the Hansford case[2/] requires that a trial court must order a hearing concerning competency to stand trial when the medical report from St. Elizabeths Hospital shows that a defendant is addicted to drugs.

Hansford concerned a conviction for violation of the federal narcotics laws. Prior to trial, Hansford was committed to St. Elizabeths Hospital for a 60-day mental examination. He was diagnosed as "without mental disorder and drug addiction in remission." Without referring to his narcotic problem, the Hospital reported that he was competent to stand trial, and the District Court adopted this determination without hearing. At trial, the appellant raised the defense of insanity. Extensive evidence was admitted during trial of the case concerning the relationship between his mental condition and his narcotic addiction.

2/ Hansford v. United States, U.S. App. D.C. , 365 F. 2d 920 (1966), petition for rehearing en banc denied.

On the basis of these facts, this Court held that there was " ... a sufficient likelihood of incompetence to have imposed on the trial court a duty to inquire into appellant's competency." It concluded that, " ... only by a hearing can it be determined whether any particular defendant is incompetent because of his use of drugs." (365 F. 2d 923) The court made it clear that the full hearing on competency would be required in every case involving a diagnosis of narcotics addiction as a result of an examination at St. Elizabeths Hospital. The necessity for hearing was not dependent upon the evidence elicited at trial. This is manifest from this Court's holding that a competency hearing is required upon a diagnosis of drug addiction, and that it is "also" necessary when it appears that a defendant may be suffering from withdrawal symptoms during trial. (365 F. 2d 923)

As noted in the statement of this case, supra, the appellant received from St. Elizabeths Hospital almost the identical diagnosis which Hansford received. The only possible distinction between the instant case and Hansford lies in the fact that there was also evidence of mental incompetence introduced at Hansford's trial. This distinction is meaningless, however, in light of this Court's statement at page 6 of the slip opinion in Hansford (365

F. 2d 923):

> "We believe the record in this case demonstrates, as did that in Pate v. Robinson, a sufficient likelihood of incompetence to have imposed on the trial court a duty to inquire into appellant's competency. This is not, of course, to say that a defendant under the influence of narcotics is necessarily incompetent. Narcotic use does not invariably produce an acute brain syndrome, nor is every syndrome of the same degree of severity. The effect of narcotic use will vary depending on the amount of drugs taken, the degree of tolerance developed by the individual, and the idiosyncratic reaction of the person to the drugs. For this very reason, only by a hearing can it be determined whether any particular defendant is incompetent because of his use of drugs. (footnote omitted)" (Emphasis supplied)

The Court then went on to state, very significantly, "We also believe that a competency hearing is constitutionally required if it appears that a defendant may be suffering from withdrawal symptoms during trial." (Emphasis supplied) The use of the word "also" makes it crystal clear that the Court was distinguishing between matters brought to the Court's attention prior to the trial and evidence elicited during trial. The Court clearly stated that in both of these instances, the competency hearing would be required.

The panel of this Court which affirmed the appellant's conviction on December 28, 1966, did not rule upon appellant's central contention upon appeal. This contention was that it would be inconsistent to require that a competency

hearing should be held only when evidence is adduced at trial concerning drug addiction and withdrawal symptoms. Clearly, if a defendant is not competent to assist his counsel at trial by reason of his drug addiction, he will not be able to assist his counsel in development of those aspects of his incompetence which were caused by the very addiction which caused his incompetence. Thus, evidence introduced during trial cannot be the central test for application of the Hansford doctrine. This would place upon an incompetent defendant the burden of proving his incompetence during trial, when he never should have been allowed to go to trial.

If the Hansford case is to be an effective judicial instrument to ensure that an addict is competent to stand trial, there must be a hearing in every case when a hospital certifies that a defendant is suffering from drug addiction which is in remission. "Remission", by its nature, is transitory, being a process of abatement of symptoms "for a period." Websters Seventh Collegiate Dictionary.

Unless a competency hearing is required in every case involving such a diagnosis, the Hansford case must be viewed as an accident. The facts developed at trial in Hansford were in the record only because an insanity defense

was invoked in that case. The defense of insanity is, of course, unrelated to questions of competence to stand trial. Thus, if the competency hearing is not required when the hospital issues this key diagnosis, an incompetent defendant may be forced to trial and convicted unless he raises the defense of insanity. To force such a choice upon an incompetent defendant is manifestly unjust. A simple hearing would resolve the problem.

For the foregoing reasons, it is respectfully requested that this Court order the requested rehearing en banc.

Respectfully submitted,

Edwin R. Schneider, Jr.
1744 R Street, N.W.
Washington, D. C. 20009

Attorney for Appellant
(Appointed by this Court)

January 12, 1967

Certificate of Counsel

In accordance with the provisions of Rule 26 of this Court, I certify that the foregoing petition is presented in good faith and not for delay.

Edwin R. Schneider, Jr

Certificate of Service

I, Edwin R. Schneider, Jr., certify that I mailed a copy of the foregoing petition on January 12, 1967, to Frank Q. Nebecker, Assistant United States Attorney, U. S. Court House, Washington, D. C.

Edwin R. Schneider, Jr.